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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/859,518	05/18/2001	Alessandro Seneci	622-46	4287

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EXAMINER

HENDRICKS, KEITH D

ART UNIT PAPER NUMBER

1761

DATE MAILED: 07/02/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/859,518

Applicant(s)

SENECI, ALESSANDRO

Examiner

Keith Hendricks

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 7-12 is/are rejected.
- 7) ☒ Claim(s) 4-6 and 13-15 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 8.

- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 2, 9 and 12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 2 appears to conflict with both claim 1, from which it depends, and the specification, at the bottom of page 3. Claim 1 refers to the apparent density of the entire composition, whereas claim 2 states that the "non gelating soluble alimentary fibre has an apparent density of from 430 to 550 g/l." Page 3 of the specification states that "the present composition is a powder having an apparent density of from 430 to 550 g/l." Correction of claim 2 is required.

Claim 9, as well as several places within the specification, provides a numerical representation of, for example, "5.5". Accepted U.S. practice utilizes a decimal point (.), not a comma (,). Applicants should correct this usage to be consistent throughout the claims and specification; in contrast, see claim 1, line 2.

In claim 12, the term "customary" is a relative term which renders the claim indefinite. The term is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. It is unclear as to what types of excipients would be considered "customary", and by which standards.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3 and 7-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Yotka et al.

Yotka et al. disclose the production of chewing gum products using oligofructose. The chewing gum contains a combination bulking agent/sweetener composition, which is made by co-drying a solution

Art Unit: 1761

of oligofructose (i.e. inulin; see col. 3, lines 59-60) with a sweetener, for example, natural sugar sweeteners and high-intensity sweeteners such as aspartame. At levels greater than 10% (with respect to the finished gum product weight), the oligofructose (inulin) stabilizes aspartame (col. 5, lines 45-48; col. 12, lines 8-10; col. 10, lines 47-49, etc.). Oligofructose may be used to encapsulate, agglomerate or entrap high intensity sweeteners such as aspartame (APM), which may improve the sweetener's shelf-life (col. 6, ln 44-53). Oligofructose may also be co-dried with a variety of natural sugars (col. 6, ln 11-14). In the examples (examples 122-125, etc.), as well as in claims 2-3 of the reference, the ratios and amounts of these components are provided. In example 123, aspartame is present in a ratio to inulin (Raftilose 95 powder) of 0.3 to 2.0 percent of the gum composition. Maintaining the disclosed protocol of production of the bulking agent/sweetener composition first, the ratio of these components would fall within the instantly-claimed ratios: specifically 13% APM to 87% inulin powder. Example 124 provides percentages of 2.9% APM to 97% inulin (present in the gum composition as 0.3 and 10.0%, respectively).

Finally, it is noted that, at col. 4, lines 20-35, the reference discloses a known product, Raftilose 95, which is available in product form, and is "used in most of the examples herein". Raftilose "contains 95% oligofructose units and 5% sugars (glucose, fructose and sucrose)." This product alone reads upon claims 1-3, 7, and 10-11. The recitation of the "apparent density" of the instantly-claimed product, is considered an inherent property of the product, as the components are identical to those claimed, and in the same percentage ratios.

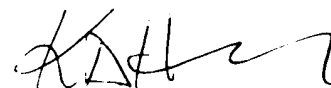
Conclusion

Claims 4-6 are free of the prior art of record.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Keith Hendricks whose telephone number is (703) 308-2959. The examiner can normally be reached on M-F (8:30am-6pm); First Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (703) 308-3959. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9565 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.



**KEITH HENDRICKS
PRIMARY EXAMINER**